



29 AUG 2007

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| In re Application of | : | DECISION |
| KAMLEITER et al. | : | |
| Application No.: 10/582,349 | : | |
| PCT No.: PCT/EP2004/010434 | : | |
| Int. Filing Date: 17 September 2004 | : | |
| Priority Date: 11 December 2003 | : | |
| Attorney Docket No.: 51648 | : | |
| For: METHOD FOR THE PRODUCTION OF | : | |
| TUBULAR MEMBRANES | : | |

This decision is in response to applicants' submission filed 30 July 2007, which has properly been treated as a request for status under 37 CFR 1.43 for inventor Wilhelm-N. Gudernatsch and as a petition under 37 CFR 1.47(a) for inventor Michael Kamleiter.

BACKGROUND

On 17 September 2004, applicants filed international application PCT/EP2004/010434, which designated the United States and claimed a priority date of 11 December 2003. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 07 July 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 12 June 2006 (June 2006 being a Sunday).

On 09 June 2006, applicants filed a transmittal letter for entry in to the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 21 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) were required.

On 30 July 2007, applicants filed the instant submission which has properly been treated as a request for status under 37 CFR 1.43 for inventor Wilhelm-N. Gudernatsch and as a petition under 37 CFR 1.47(a) for inventor Michael Kamleiter.

DISCUSSION

Request Under 37 CFR 1.43

The indication that inventor Wilhelm-N. Gudernatsch is suffering from severe mental illness and the execution of the declaration of inventors by his legal representative, Edith Gudernatsch, on his behalf has been treated as a request for status under 37 CFR 1.43.

The declaration does not include the residence, mailing address and citizenship of the person(s) signing on behalf of the legally incapacitated inventor (37 CFR 1.497(b)(2)) in addition to the full name and citizenship of the legally incapacitated inventor (37 CFR 1.497(a)(3)). Also, the declaration does not indicate that Edith Gudernatsch is the legal representative for the deceased inventor.

Additionally, the declaration of inventors signed by Edith Gudernatsch fails to comply with 37 CFR 1.497(a)-(b) because it executes the wrong international application (it executes PCT/EP2004/010304 rather than PCT/EP2004/010434).

Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to item (1), the petition fee of \$200 has been charged to Deposit Account 18-2220.

Item (2) has not been met. MPEP § 409.03(d) states in part:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. . . . It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

Here, it is not clear that a copy of the application papers including the specification, claims, and drawings was not sent to Mr. Kamleiter (or rather to Mr. Robert Dorr who is acting as the representative of Mr. Kamleiter).

Additionally the declaration of facts of Martin Bartels states that Mr. Dorr refuses to sign unless compensated. Where there is an express refusal to sign, attention is directed to MPEP § 409.03(d) which states in part:

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

Item (3) has not been met. While the last known address of Mr. Kamleiter has been provided, the address of his legal representative has not.

Item (4) has not been met. The declaration of inventors executes the wrong application number, indicates the wrong international filing date, and indicates the wrong title.

CONCLUSION

For the reasons set forth above, the request for status under 37 CFR 1.43 is **REFUSED**.

For the reasons set forth above, the petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition under 37 CFR 1.47(a) and/or 37 CFR 1.43 is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a) [and/or 37 CFR 1.43, as appropriate]." No additional petition fee is required.

Failure to timely file a proper reply will result in abandonment of the application.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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